



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG383**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Gustavus Ferry Terminal Improvements Project**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an Incidental Harassment Authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an Incidental Harassment Authorization (IHA) to take small numbers of animals, by Level A and Level B harassment, incidental to the Gustavus Ferry Terminal Improvements project in Gustavus, Alaska

**DATES:** The authorization is effective from December 15, 2018, through December 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application, supporting documents, as well as the issued IHA may be obtained online at:

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>*. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The National Defense Authorization Act for Fiscal Year 2004 (NDAA)(Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

## History of Request

On July 31, 2015, NMFS received an application from the Alaska Department of Transportation and Public Facilities (ADOT&PF) requesting the take of marine mammals incidental to reconstructing the existing Gustavus Ferry Terminal in Gustavus, Alaska. NMFS published a notice of proposed IHA and request for comments in the **Federal Register** on June 23, 2016 (81 FR 40852). We subsequently published the final notice of our issuance of the IHA on April 10, 2017 (82 FR 17209), making the IHA effective from December 15, 2017 through December 14, 2018. In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA. The specified activities were expected to result in the take of seven species of marine mammals including harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*).

On May 8, 2018, ADOT&PF informed NMFS that work on the project would be postponed due to design revisions and local community considerations and that no work would be completed under the 2017-2018 IHA. ADOT&PF requested that a new IHA be issued that would be effective from December 15, 2018 through December 14, 2019. NMFS published a notice of a proposed IHA and request for comments in the **Federal Register** on August 9, 2018 (83 FR 39424). Under this IHA, ADOT&PF will conduct pile driving activities between the in water work window dates of March 1 through May 31, 2019, and September 1 through November 30, 2019. Although there were minor

modifications to the work plan covered under the issued IHA, the number of authorized takes remains unchanged from those listed in the 2017-2018 Authorization.

### **Description of the Specified Activities**

The 2018-2019 IHA covers the same in-water construction activities as those covered by the 2017-2018 IHA which was issued for the modernization of the Gustavus Ferry Terminal project. Minor revisions have been made to the number and types of piles that will be installed and removed. These revisions were described by NMFS in a notice of proposed IHA and request for comments published in the **Federal Register** on August 9, 2018 (83 FR 39424). Additionally, NMFS refers the reader to the documents related to the previously issued 2017-2018 IHA for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2017-2018 IHA for ADOT&PF's Gustavus Ferry Terminal Improvements project (82 FR 17209; April 10, 2017), ADOT&PF's application, the **Federal Register** notice of the proposed IHA (81 FR 40852; June 23, 2016) and all associated references and documents. A detailed description of the planned vibratory and impact pile driving activities at the ferry terminal improvements project is found in these documents. The description remains accurate with the exception of the minor modifications noted below.

Differences between the 2017-2018 IHA and the issued 2018-2019 IHA are shown in Table 1. Generally speaking, pile driving and removal will occur over the same number of days (maximum of 50) with installation and removal of 16 additional piles over 21 additional hours for the 2018-2019 IHA. These changes represent a 3.5 percent increase in the number of piles installed and a 21.9 percent increase in the number of piles removed. The duration of impact driving will remain the same while the time spent

vibratory driving will increase by 18.4 percent. The additional time required for vibratory driving is due to the increase in anticipated number of piles removed. Note that these changes will have a nominal impact on the calculated Level A harassment isopleths and no effect on Level B harassment isopleths. Therefore, the size of the Level A harassment and Level B harassment zones remains unchanged.

**Table 1. Gustavus Ferry Pile Installation and Removal Summary.**

<b>Pile size (Inches)</b>	<b># of piles – 2017-2018 IHA</b>	<b># of piles – 2018-2019 IHA</b>
30	14	18
24	40	34 install/12 remove
18	0	4 remove
16	0	4 install/4 remove
12.75	3 install/16 remove	3 install/9 remove
Total installed/total Piles	57/73	59/89
<b>Driving Time Duration</b>	<b>2017-2018 IHA (hours)</b>	<b>2018-2019 IHA (hours)</b>
Impact Driving	57	57
Vibratory Driving	114	135
Total	171	192

A description of ADOT&PF's planned project is provided in the **Federal Register** notice for proposed IHA (83 FR 39424; August 9, 2018). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice and related documents for the description of the specific activity.

### **Comments and Responses**

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on August 9, 2018 (83 FR 39424). That notice described ADOT&PF's proposed activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received a single comment letter from the Marine Mammal Commission

(Commission). Specific comments from the Commission's letter and corresponding responses are provided below.

*Comment 1:* The Commission wrote that in the original IHA application submitted in 2016, ADOT&PF proposed to use 154.3 decibels (dB) re 1 micropascal ( $\mu$ Pa) at 10 meters (m) as the proxy source level (SL) for vibratory pile driving of 30-inch steel piles based on measurement of a single pile obtained at the ferry terminal in Kake, Alaska (McGillivray *et al.* 2015). The Commission noted that this measurement is much lower than other measurements obtained from vibratory pile driving of 30-in steel piles at other locations and lower than measurements obtained from another pile at Kake. The Commission asserts that the primary factor affecting the source level is the sediment composition, which at Kake consists of organic mud. However, Starkes and Stutes (2016) stated that geotechnical reports indicated that substrates at Kake and Gustavus differ and that substrates at Gustavus are composed primarily of sand and silty sands. The Commission recommended use of a mean of 166 dB re 1  $\mu$ Pa based on source levels obtained at other locations where the substrates are comprised of sand and silt rather than 157.7 dB re 1  $\mu$ Pa at 10 m NMFS adopted for Gustavus. The Commission also recommends that NMFS re-estimate the extents of the Level A and B harassment zones accordingly and increase the numbers of marine mammal takes appropriately.

*NMFS Response:* As noted above, NMFS used a proxy source level of 157.7 dB re 1  $\mu$ Pa for vibratory driving of 30-in steel piles during the estimated take analysis used to develop the original Gustavus IHA. ADOT&PF will be using the same type of vibratory hammers at Gustavus as were used at Kake while the pile types and sizes are comparable between the two sites. NMFS does not dispute that the SL used in the

Gustavus analysis is generally lower than others that have been recorded across various sites. However, SLs for similar piles measured at different locations tend to cover a range of values. For example, SL measurements from Kodiak for vibratory driving of the same size and type of pile were even lower than those recorded at Kake, although the researchers speculated that the low values be due to the drilling/socketing of piles or sediment composition at Kodiak (Denes *et al.*, 2017). For the Gustavus analysis, NMFS elected to use a value from the lower end of recorded ranges. In order to confirm that the SLs adopted by NMFS are appropriate for use at Gustavus, NMFS will require ADOT&PF to conduct sound source verification (SSV) testing. If the recorded SLs at Gustavus are appreciably greater than those measured at Kake, ADOT&PF will increase the shutdown and harassment zones as appropriate.

*Comment 2:* The Commission recommends that NMFS require ADOT&PF to use at least three Protected Species Observers (PSO) to monitor the full extent of the Level B harassment zone during all vibratory pile-driving activities and ensure the numbers of animals taken are extrapolated to the full extent of the Level B harassment zone, if unable to be fully monitored.

*NMFS Response:* NMFS believes that the existing Level B harassment zone can be adequately measured utilizing only two PSOs. The option of adding more PSOs was discussed with ADOT&PF. NMFS suggested that PSOs could be stationed on vessels or on nearby islands. However, due to the frequency, severity and unpredictability of weather in Icy Passage, ADOT&PF was reluctant to employ vessels for monitoring purposes since the safety of PSOs could be at risk. Additionally, island-based PSOs could be stranded on these uninhabited islands overnight, or longer, if retrieval vessels

are unable to pick up observers due to weather conditions. NMFS concurred with these assessments. To estimate the total number of takes, NMFS will require ADOT&PF to extrapolate observed take numbers to cover the entire Level B harassment zone if portions cannot be monitored effectively by PSOs.

*Comment 3:* The Commission recommends that NMFS (1) increase the numbers of Level A harassment takes for harbor seals, harbor porpoises, and Steller sea lions based on their residency patterns, social behavior, and potential to occur within the various Level A harassment zones and (2) reduce the size of the shutdown zone for Steller sea lions to reduce frequency of shutdowns.

*NMFS Response:* NMFS discussed with ADOT&PF both increasing take of the species listed above and reducing the size of the Steller sea lion shutdown zone. Based on observational data collected by Gustavus, NMFS and the applicant believe that the existing take numbers are adequate. Note that ADOT&PF is currently required to shut down at 4 pm, after which Steller sea lions are known to follow charter fishing vessels to the dock. Additionally, shutdown will occur when five or more Steller sea lions are observed following charter fishing vessels to the dock prior to 4 p.m. These are the conditions that would most likely result in take of Steller sea lions. Given these requirements, ADOT&PF and NMFS do not believe that the existing shutdown zone will result in a high rate of shutdowns.

*Comment 4:* If NMFS does not follow the Commission's recommendations, the Commission recommends that NMFS require ADOT&PF to cease its activities if authorized take limits are met. The Commission recommends that the authorization only be revised after a 30-day public comment period is afforded for review of any revisions



to the authorization issued in 2018. The Commission understands that in certain circumstances (*e.g.*, unexpected impacts from El Niño conditions) the numbers of authorized takes may not be sufficient. However, the Commission does not believe those types of unforeseeable circumstances should not be treated equally to those which arise from NMFS failing to authorize adequate numbers of takes.

*NMFS Response:* NMFS believes that the number of takes authorized under this IHA is adequate to cover the action planned by ADOT&PF. As is the case for any IHA, if take numbers for one or more authorized species are exceeded, the applicant is required to cease in-water pile driving activities and contact NMFS. Furthermore, NMFS is requiring ADOT&PF to conduct SSV testing to confirm that measured sound source levels at the action site are similar to the values that were used to estimate take as well identify shutdown and harassment zone sizes. As noted in the IHA, NMFS will revise shutdown and harassment zone sizes if necessary based on SSV testing results without requiring a 30-day comment period.

*Comment 5:* The Commission had previously recommended that NMFS make several general improvements for pile-driving authorizations. As part of this comment letter, the Commission indicated that NMFS should (1) incorporate the Commission's various recommendations into its pile-driving assessment guidance, (2) finalize that guidance in the near term, including compiling source level data into a central database, and (3) make such guidance available on NMFS's incidental take authorization website.

*NMFS Response:* NMFS appreciates the Commission's interest in improving pile-driving authorizations. NMFS has been developing pile-driving guidance documents that include many of the Commission's recommendations. As soon as draft documents have

been completed, they will be shared with the Commission. Once the guidance documents have been finalized, they will be posted on NMFS's incidental take authorization website, as appropriate.

*Comment 6:* The Commission recommends that NMFS require action proponents to provide proposed hydroacoustic monitoring plans when authorization applications are submitted and make those plans available for public comment. If such plans are not provided in a timely manner, at the very least, NMFS should provide them to the Commission for review sufficiently in advance of issuing the final authorization.

*NMFS Response:* During the initial review period, NMFS requests that applicants provide basic information regarding proposed hydroacoustic monitoring plans as part of IHA applications. We also generally ask for comprehensive monitoring plans for review prior to publication of the final IHA. If NMFS has received the monitoring plan before publication of the final IHA, it is shared with the Commission and posted to our website. However, the MMPA does not require submission of the monitoring plan prior to publication of the final IHA. Under these conditions, NMFS indicates in the final IHA that a hydroacoustic monitoring plan must be submitted to NMFS and approved prior to initiation of the monitoring. NMFS will also share the plan with the Commission for review in such cases.

*Comment 7:* The Commission recommends that NMFS, in lieu of adopting its proposed renewal process for extending authorizations beyond their original one-year period of validity without providing a new opportunity for public review and comment, use abbreviated **Federal Register** notices and reference existing documents to streamline the incidental harassment authorization process. If NMFS adopts the proposed renewal

process notwithstanding the Commission's recommendation, the Commission further recommends that NMFS provide the Commission and the public with a legal analysis supporting its conclusion that the process is consistent with the requirements under section 101(a)(5)(D) of the MMPA.

*NMFS Response:* NMFS appreciates the streamlining achieved by the use of abbreviated FR notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements.

We believe our method for issuing renewals meets statutory requirements and maximizes efficiency. Importantly, such renewals would be limited to circumstances where: The activities are identical or nearly identical to those analyzed in the proposed IHA; monitoring does not indicate impacts that were not previously analyzed and authorized; and, the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as they are for all IHAs. The option for issuing renewal IHAs has been in NMFS's incidental take regulations since 1996. We will provide any additional information to the Commission and consider posting a description of the renewal process on our website before any renewal is issued utilizing this process.

### **Description of Marine Mammals**

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to the issued 2018-2019 IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the 2017-2018 IHA.

### **Potential Effects on Specified Activities on Marine Mammals and Their Habitat**

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in these previous documents, which remains applicable to the issuance of the 2018-2019 IHA. There is no new information on potential effects.

### **Estimated Take**

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for the 2018-2019 IHA are identical to those used in the 2017-2018 IHA. The source levels remain unchanged from the previously issued IHA, and NMFS' 2016 acoustic technical guidance was used to address new acoustic thresholds in the notice of issuance of the 2017-2018 IHA. Specifically, local observational data was used to calculate daily take rates in the absence of density data. Since the number of pile-driving days (50) planned for both the 2017-2018 IHA and the 2018-2019 IHA are the same, the total estimated take projections will be identical.

### **Description of Mitigation, Monitoring and Reporting Measures**

A description of mitigation, monitoring, and reporting measures is found in the

previous documents, which are identical to those contained in the 2018-2019 IHA. The following measures would apply to ADOT&PF's mitigation requirements:

*Establishment of Shutdown Zone*—For all pile driving activities, ADOT&PF will establish a shutdown zone identical to those described in the initial **Federal Register** notice of issuance (82 FR 17209; April 10, 2017). The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). In this case, shutdown zones are intended to contain areas in which sound pressure levels (SPLs) equal or exceed acoustic injury criteria for some authorized species, based on NMFS' acoustic technical guidance published in the **Federal Register** on August 4, 2016 (81 FR 51693).

*Establishment of Monitoring Zones*—ADOT&PF must establish Level A harassment zones. These zones include areas where animals may be exposed to sound levels that could result in permanent threshold shift (PTS). ADOT&PF will establish Level B harassment disturbance zones which are areas where SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. The Level A and Level B harassment zones are the same as those described in the initial Federal Register notice of issuance (82 FR 17209; April 10, 2017). Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity. NMFS has established monitoring protocols, including recording the number of animal observed in the Level A and Level B harassment zones. These protocols are described in the **Federal Register** notice of the issuance (82 FR 17209; April 10, 2017).

and are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in this 2018-2019 IHA. Shutdown, Level A harassment and Level B harassment zones are depicted in Table 2.

**Table 2. Shutdown, Level A Harassment and Level B Harassment Isopleths Associated with Impact and Vibratory Pile Driving.**

Species	Shutdown Zone – Impact /Vibratory	Level A Harassment Zone – Impact	Level B Harassment Zone - Impact/Vibratory
Steller Sea Lion	25/10 m	n/a	2,090/3,265 m
Humpback whale	550/20 m	n/a	2,090/3,265 m
Harbor Seal	100/10 m	285 m	2,090/3,265 m
Harbor Porpoise	100/20 m	630 m	2,090/3,265 m
Killer whale	25/10 m	n/a	2,090/3,265 m
Minke whale	550/20 m	n/a	2,090/3,265 m
Dall’s Porpoise	100/20 m	630 m	2,090/3,265 m

*Temporal and Seasonal Restrictions*—Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted and all in-water construction will be limited to the periods between March 1 and May 31, 2019, and September 1 and November 30, 2019.

*Soft Start*—The use of a soft-start procedure is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to implement soft start procedures. Soft start is not required during vibratory pile driving and removal activities.

*Visual Marine Mammal Observation*—Monitoring must be conducted by PSOs, who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the 2017-2018 IHA (82 FR 17209; April 4, 2017). In

order to effectively monitor the pile driving monitoring zones, two MMOs must be positioned at the best practical vantage point(s). If waters exceed a sea-state which restricts the observers' ability to make observations within the shutdown zone (*e.g.*, excessive wind or fog), pile installation and removal will cease. Pile driving will not be initiated until the entire shutdown zone is visible. MMOs shall record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the 2017-2018 IHA (82 FR 17209; April 10, 2017). At the conclusion of the in-water construction work, ADOT&PF will provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

### **Determinations**

ADOT&PF plans to conduct in-water construction activities similar to those covered in the previous 2017-2018 IHA. As described above, the number of estimated takes of the same stocks of marine mammals is the same as those authorized in the 2017-2018 IHA that were found to meet the negligible impact and small numbers standards. Our analysis showed that less than 9.07 percent of the populations of affected stocks, with the exception of minke and killer whales, could be taken by harassment. For Northern resident and West Coast transient killer whales, the percentages, when instances of take are compared to abundance, are 48.2 percent and 51.8 percent, respectively. However, the takes estimated for these stocks (up to 126 instances assuming all takes are accrued to a single stock) are not likely to represent unique individuals. Instead, we anticipate that there will be multiple takes of a smaller number of individuals.

The Northern resident killer whale stock are most commonly seen in the waters around the northern end of Vancouver Island, and in sheltered inlets along B.C.'s Central and North Coasts. They also range northward into Southeast Alaska in the winter months. Pile driving operations are not permitted from December through February. It is unlikely that such a large portion of Northern resident killer whales with ranges of this magnitude would be concentrated in and around Icy Passage.

NMFS believes that small numbers of the West coast transient killer whale stock would be taken based on the limited region of exposure in comparison with the known distribution of the transient stock. The West coast transient stock ranges from Southeast Alaska to California, while the planned project activity would be stationary. A notable percentage of West coast transient whales have never been observed in Southeast Alaska. Only 155 West coast transient killer whales have been identified as occurring in Southeast Alaska according to Dahlheim and White (2010). The same study identified three pods of transients, equivalent to 19 animals that remained almost exclusively in the southern part of Southeast Alaska (*i.e.* Clarence Strait and Sumner Strait). This information indicates that only a small subset of the entire West coast Transient stock would be at risk for take in the Icy Passage area because a sizable portion of the stock has either not been observed in Southeast Alaska or consistently remains far south of Icy Passage.

There is no current abundance estimate for minke whale since population data on this species is dated. However, the authorized take of 42 minke whales may be considered small. A visual survey for cetaceans was conducted in the central-eastern Bering Sea in July-August 1999, and in the southeastern Bering Sea in 2000. Results of



the surveys in 1999 and 2000 provide provisional abundance estimates of 810 and 1,003 minke whales in the central-eastern and southeastern Bering Sea, respectively (Moore *et al.*, 2002). Additionally, line-transect surveys were conducted in shelf and nearshore waters in 2001-2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 for this area (Zerbini *et al.*, 2006). However, these estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. (Allen and Anglis 2012). Clearly, 42 authorized takes should be considered a small number, as it constitutes only 5.2 percent of the smallest abundance estimate generated during the surveys just described and each of these surveys represented only a portion of the minke whale range.

Therefore, the number of individual animals authorized to be taken for all species are considered small relative to the relevant stocks or populations.

The 2018-2019 IHA includes mitigation, monitoring, and reporting requirements that are identical to those depicted in the 2017-2018 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF's activities will not have an

unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

In order to comply with the ESA, NMFS Alaska Regional Office (AKR) Protected Resources Division issued a Biological Opinion on March 21, 2017 under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section 101(a)(5)(D) of the MMPA. This consultation concluded that the project was likely to adversely affect but unlikely to jeopardize the continued existence of the threatened Mexico DPS of humpback whale (*Megaptera novaeangliae*) or the endangered western DPS of Steller sea lion (*Eumatopias jubatus*), or adversely modify designated critical habitat for Steller sea lions. In a memo dated June 13, 2018, NMFS AKR concluded that re-initiation of section 7 consultation is not necessary for the issuance of the 2018-2019 IHA. The only modification to the project is a time shift of one year. No additional take has been requested by ADOT&PF or has been authorized by NMFS. All mitigation measures described in the Biological Opinion would be implemented to reduce harassment of marine mammals and document take of marine mammals. For these

reasons, we anticipate no new or changed effects of the action beyond what was considered in the 2017 Biological Opinion.

### **National Environmental Policy Act**

In compliance with NOAA policy, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), NMFS determined the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

### **Authorization**

As a result of these determinations, we have issued an IHA to ADOT&PF for conducting the described construction activities related to city dock and ferry terminal improvements from December 15, 2018 through December 14, 2019, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 26, 2018.

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Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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